

**Banning Open Burning**

Department of Agriculture / Department of Commerce and Regulation /
Department of Environment & Natural Resources

Synopsis: *While open burning is conducted for a number of generally accepted purposes, it must be done with caution. South Dakota recently experienced severe dry conditions that resulted in increased fire activity. While some called for a statewide ban on open burning, law prohibits the state from issuing any rule generally prohibiting all open burning. State law reserves the power to generally prohibit open burning activity to municipal and county governments.*

Background

Open burning is typically conducted for a number of generally accepted purposes:

- Fire training;
- Land clearing;
- Right-of-way maintenance operations;
- Agricultural crop burning;
- Prescribed fires to manage ecosystems;
- Elimination of fire hazards;
- Disposal of untreated lumber scraps and trees; and
- Recreational or ceremonial campfires.

During dry conditions, however, this activity should be conducted with the utmost caution. This past year, some of those fires quickly became unmanageable, consuming thousands of acres. A volunteer firefighter died fighting one such fire that started as a small, controlled burn.

When fire danger runs high and the number of fires increases, the State is often requested to place a ban on open burning until conditions improve.

However, state government has very limited authority to control open burning, and state law prohibits the state from issuing any rule generally prohibiting all open burning.

State law reserves the power to generally prohibit open burning activity to municipal and county governments.

Increased Fire Activity

South Dakota experienced severe dry conditions during the fall of 1999 and the spring of 2000, increasing the number of grass and wildland fires throughout the state.

This past fall and spring, several fire departments that average two fire calls a month reported fighting two and three fires per day, burdening their personnel, equipment and budgets.

Fires requiring assistance to extinguish are reported by local fire departments to the South Dakota Department of Agriculture's Division of Resource Conservation and Forestry.

Fire Cause	1999	2000 (to 6/5/00)
Debris Burning	270	144
Equipment Use	157	42
Lightning	66	6
Children	41	15
Smoking	18	10
Railroads	11	15
Campfire	2	0
Arson	6	11
Miscellaneous	171	224
Total	742	467

State Permission for Burning Activity

State government controls permission for burning activity only in the Black Hills Forest Fire Protection District, an area designated for special fire protection by the legislature in 1941 due to its unusually high fire risk.

Black Hills Forest Fire Protection District



Permits for burning activity in the Black Hills Forest Fire Protection District are issued by the state Division of Resource Conservation & Forestry or the United States Forest Service, depending on ownership of the land.

Fire management officers determine if conditions are favorable for burning in the area. A toll-free burning permit hotline is also available: 1-800-275-4955.

Burning permits do not relieve a person or group of liability for extinguishment costs if the fire gets out of control. The State Forester is allowed by law to take action in circuit court to recover such costs (SDCL § 41-20-4).

Burning within the Black Hills Forest Fire Protection District without a burning permit is a class 1 misdemeanor and any person who burns without a permit is liable for civil damages for all injuries caused by the fire (SDCL § 34-35-16).

State Prohibition of Burning Activity

The state Board of Minerals and Environment, for the purpose of controlling

pollution, is required by law to adopt reasonable requirements for open burning.

The law also prohibits the Board from passing a general ban on open burning: "The board may not adopt any rule generally prohibiting all open burning, but any board rule regulating open burning shall be only as is necessary to address a specific problem." (SDCL § 34A-1-18).

The Board, through the Department of Environment and Natural Resources, has adopted solid waste rules prohibiting the open burning of garbage at solid waste landfills (ARSD 74:27:13:11).

The Board has also adopted air quality rules to address the open burning of waste materials from both rural and urban communities that are not taken to a landfill.

The air quality rules prohibit the open burning of materials that generate hazardous air pollutants that have the potential to cause serious health problems. These materials include oils, railroad ties, coated electrical wire, rubber, tires, tarpaper, asphalt shingles and wood products treated with inorganic arsenicals, pentachlorophenol, or creosols (ARSD 74:36:06:07).

Open burning of these materials was prohibited because an open flame does not attain a high enough temperature to destroy the chemicals, thus causing a potential for toxic chemicals to be contained in the smoke.

The rules do not identify what is permissible to burn.

Any person who causes an emission in violation of the air quality rules is liable for a civil penalty up to \$10,000 per day of violation or for damages to the environment or both (SDCL § 34A-1-39).

State Fire Marshal

The State Fire Marshal has statutory authority over fire and life safety enforcement in public buildings, schools, day care centers and multi-family

residences. No authority exists for the State Fire Marshal to ban open burning.

Local Authority

State law reserves the power to generally prohibit open burning activity to municipal and county governments. "Any general prohibition against all open burning shall be determined by each municipality or by each county for areas outside the boundaries of the municipalities." (SDCL § 34-1-18).

For example, the Pennington County Air Quality Board has an open burning ordinance (#12 - 2.02) for the City of Rapid City and the immediate area surrounding the city limits.

During the course of the recent dry conditions, several other counties passed ordinances making it a misdemeanor to conduct open burning within the county.

Many counties chose to adopt resolutions, referencing the state law banning burning of land or other flammable material without consideration of weather conditions.

Contact your local States Attorney's Office or the City Attorney's Office to determine if there are open burning requirements in your area.

Burning Activity on State or Local Government Land

Outside of the Black Hills Forest Fire Protection District, it is a class 2 misdemeanor to start an open fire on public lands owned, leased, controlled or managed by the state or any political subdivision (SDCL § 5-4-15).

There are three exceptions, which allow fires on state or local government lands:

1. In an established fireplace approved or provided by the governmental entity. For example, a fire ring in a state park or recreation area for camp fires.
2. Fires on shoreline barren of vegetation which do not constitute an apparent risk of fire to surrounding vegetation not located within a state, county, or municipal park, state recreation area or nature preserve.
3. Fires started by persons authorized by the state or local government to start fires on such lands within the respective governmental entity.

However, use of approved fireplaces may be prohibited when fires may be dangerous. For example, the Department of Game, Fish & Parks has banned fires in certain parks at certain times due to extreme fire danger.

It is a class 1 misdemeanor to start an open fire on state or local government lands and fail to extinguish it, regardless of

whether the fire was started in an approved fireplace (SDCL § 5-4-16).

In addition to the criminal penalties, anyone who violates the laws regarding fires on state or local government lands is liable for all damages and extinguishment costs (SDCL § 5-4-17).

Other Legal Penalties for Open Burning

It is a class 1 misdemeanor crime to negligently kindle fire in any woods, brush, fields, marshes, or prairies and leave it unquenched or negligently or without full precaution to prevent fire from spreading beyond control so as to endanger the property of another (SDCL § 34-35-9).

It is also a class 1 misdemeanor to set or cause a fire in any woods, marsh, prairie, grass or stubble land without a natural or

- ★ 8,000 men and women donate their time and talents in the 355 volunteer fire departments in South Dakota.
- ★ 500 firefighters staff the six full-time fire departments in South Dakota.

State Fire Marshal's Office

manmade firebreak and without "giving due caution to the prevailing and forecasted weather conditions." (SDCL § 34-35-10).

A person who sets or causes such a fire is liable for civil damages for all injury, property damage and fire extinguishment costs caused by the fire (SDCL §§ 34-35-12 and 34-35-12.1).

Setting fire to any property with criminal intent is covered by arson statutes in SDCL chapter 22-23.

Fire Danger Indices

The National Weather Service (NWS) issues fire danger indices that describe the threat of fire for a given area. There are five categories of fire danger:

Extreme - The Fire danger is severe.

Wildland fuels are tinder dry and wildfires will require extensive and reinforced attack strategies. Outdoor burning or any open fire such as cigarette smoking should be prohibited while outdoors. The life safety of firefighters and civilians in the path of any fire burning under these conditions needs to be of the utmost concern.

Very High - Conditions favor the start of many wildfires which will be difficult to control in all forest and prairie fuels. Outdoor burning should be severely restricted or prohibited.

High - Wildfires are likely. Extra precautions are required on outdoor burning. Fires in heavy and continuous fuels such as CRP fields or logging slash will be difficult to control under windy conditions.

Moderate - Some wildfires are probable. Routine caution should be taken on outdoor burning and average control difficulties are expected on escaped fires.

Low - The Fire danger is negligible. No problems are anticipated.

The NWS office in Rapid City issues daily fire danger indices for western South Dakota, and the NWS office in Sioux Falls issues them for eastern South Dakota when the danger reaches very high or extreme.

For more information

Division of Resource Conservation & Forestry:

Fire management webpage:

http://www.state.sd.us/doa/forestry/fire_management.htm

Current fire information webpage:

http://www.state.sd.us/doa/forestry/current_fire_information.htm

Department of Environment and Natural Resources, Air Quality Guideline for Open Burning website:

<http://www.state.sd.us/denr/DES/AirQuality/openburn.htm>

State Fire Marshal's Office website:

http://www.state.sd.us/dcr/fire/FIRE_hom.htm

NWS, Sioux Falls, Fire Weather:

<http://www.crh.noaa.gov/fsd/firewx.htm>

NWS, Rapid City, Fire Weather:

<http://www.crh.noaa.gov/unr/firewx/index.htm>

State statutes and administrative rules:

<http://www.state.sd.us/state/legis/lrc.htm>

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